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09/317,110	05/24/1999	PHILLIP WHITE	7791-0068-25	8653

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EXAMINER
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LAstra, DANIEL

ART UNIT	PAPER NUMBER
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3622

DATE MAILED: 03/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/317,110

Applicant(s)

WHITE, PHILLIP

Examiner

DANIEL LASTRA

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MW

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 November 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

1. Claims 1-32 have been examined. Application 09/317,110 (*PROCESS, SYSTEM AND COMPUTER READABLE MEDIUM FOR IN-STORE PRINTING OF RAINCHECKS FOR DISCOUNT COUPONS AND/OR OTHER PURCHASING INCENTIVES IN A RETAIL STORE*) has a filing date: 05/24/1999.

***Response to Amendment***

2. Applicant amended claims 1, 9, 17 and 25. Applicant amendment did not put claims 1-32 in condition for allowance.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 1-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Off et al (US 5,612,868) in view of Fajkowski (US 5,905,246) and further in view of article Customer responses to rainchecks.

As per claim 1, Off et al teach:

"at least one incentive printer" (see figure 1, item 24);

"a point-of sale (POS) controller" (see figure 1, item 10);

"at least one cash register" (see figure 1, item 12);

"a point-of-sale (POS) Bus (see figure 1);

“a retailer host computer (16) coupled to a store controller (10) through the POS bus and the host computer controls communication with all store controllers in the retailer's various store, and is responsible for generating various accounting reports. The retailer host computer has an associated data base of various files relating to the retailer's entire store operation” (see column 3, lines 39-47, and item 16 of figure 1);

Off et al fail to teach “an incentive processor for storing a plurality of purchasing incentives corresponding to a plurality of item identifiers for items subject to raincheck”.

Fajkowski teaches:

“an incentive processor for storing a plurality of purchasing incentives corresponding to a plurality of item identifiers for items subject to rainchecks” (see column 4, lines 64-67 – column 5, lines 1-13, item 200 of figure 1);

“an incentive processor or server (200) networked to all periphery devices in the store and compiling information from the peripheries concerning what coupons have been redeemed. Using this information, a program in the server may generate detailed reports such as total amount of each manufacturer's coupons redeemed, the number of inappropriate coupons redeemed by overridden and the number of coupons overridden by each cashier. The server can organize the information on redeemed coupons in any number of ways to accommodate the special needs of the particular store. Additionally, the server will transfer to the periphery device information that is intended for eventual loading by the periphery device onto coupon cards (e.g., information on future coupons or coupons for immediate use)” (see column 4, lines 64-67 – column 5, lines 1-14);

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to connect the server (200) of Fajkowski to Off et al, networking it to all store POS controller, cash register and peripheral devices through the POS bus. Fajkowski server (200) is performing similar functions as Off et al host computer (16). Adding the server (200) of Fajkowski to Off et al would be an obvious feature.

Off et al fail to teach “an incentive processor bus coupling said incentive processor to said at least one incentive printer”.

Fajkowski teaches:

“an incentive processor” (see item 200 of figure 1).

“the incentive processor or server (200) may be networked to all periphery devices in the store and compile information from the peripheries concerning what coupons have been redeemed. Using this information, a program in the server may generate detailed reports for the store management” (see column 4, lines 64-67 – column 5, lines 1-3). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to connect the incentive processor (200) of Fajkowski to Off et al through the POS bus that can also function as the incentive processor bus, where all peripherals are networked to each other. The server (200) of Fajkowski performs similar functions as the host computer (16) of Off et al. Networking the server (200) to Off et al would be an obvious result. Official notice is taken that it is old and well known in the computer art that anything saved to a computer or device memory can be printed. As lines 23-29 of column 6 of Fajkowski teach, “conventional

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system transfer the coupon information to a printer to produce a printed paper coupon. The adapter of the Fajkowski invention avoids any need for paper by transmitting the coupon directly to the coupon card". And as lines 9-14 of column 5 of Fajkowski teach, "the server (200) will transfer to the periphery device information that is needed for eventual loading by the periphery device onto coupons cards (e.g., information on future coupons or coupons for immediate use)". Also lines 65-67 of column 24 and lines 1-66 of column 25 show that the server (200) has coupons and rebates that are stored in its database and are, therefore, accessible to periphery devices. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to install a printer to the server (200) and print coupons, this printer being the incentive printer. Also, the applicant has not disclosed that the physical location of the printer connected to the server (200) provides an advantage, is used for a particular purpose, or solves a stated problem. A person of ordinary skill in the art, furthermore, would have expected the Applicant's invention to perform equally well with either the printer directly connected to the server or in another location, as long as the server and the printer can communicate to each other. If a particular server and printer can see each other, it would be obvious that a bus can connect them and that the bus can be called the incentive processor bus.

Off et al fail to teach "a POS bus coupling said POS controller, said at least one cash register, and said incentive processor". Fajkowski teaches "an incentive processor" (see item 200 of figure 1). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to connect the incentive processor

(200) of Fajkowski to the Off et al system because the server (200) of Fajkowski is performing similar functions as the host computer (16) of Off et al.

Off et al teach:

“wherein a respective cash register of said at least one cash register is configured to receive data defining an item identifier for an item that is subject to a coupon discount” (see column 4, lines 30-37);

“a coupon look-up file that includes two types of record, a coupon index record and the coupon deal record. The flag field of the coupon deal record contains only three meaningful bits of information. When bit 5 is set, the expiration date indicates the number of days beyond the printing date that the coupon is to remain valid. If bit 5 is not set, the expiration date indicates the number of days beyond a preselected reference date that the coupon is to remain valid.” (see column 6, lines 25-35);

Off et al fail to teach “wherein a respective cash register of said at least one cash register is configured to receive data defining an item identifier for an item that is subject to a raincheck”.

Fajkowski teaches “wherein a respective cash register of said at least one cash register is configured to receive data defining an item identifier for an item that is subject to a raincheck” (see column 15 lines 17-27; column 20 lines 34-67 – column 21, lines 1-67). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to add the feature of rainchecking coupons to Off et al. Rainchecking a coupon occurs when an item covered by a coupon is out of stock and the coupon will expire before the store can restock the item. Rainchecking allows the

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customers to use the coupon after its expiration date. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to add a raincheck mark or flag to the coupons of the Off et al system as lines 39-46 of column 20 of Fajkowski shows. This raincheck marker of Fajkowski would override the flag bit 5 of Off et al, allowing the customer to use the coupon after its expiration date.

Off et al teach "one of said POS controller (10) and said respective cash register (12) is configured to transmit said data defining said item identifier for said item that is subject to a coupon discount over said POS bus to a host computer (16)" (see column 3, lines 39-47).

Off et al fail to teach "one of said POS controller and said respective cash register is configured to transmit said data defining said item identifier for said item that is subject to said raincheck over said POS bus to said incentive processor".

Fajkowski teaches:

"an incentive processor or server (200) networked to all periphery devices in the store and compiling information from the peripheries concerning what coupons have been redeemed. Using this information, a program in the server may generate detailed reports such as total amount of each manufacturer's coupons redeemed, the number of inappropriate coupons redeemed by overridden and the number of coupons overridden by each cashier. The server can organize the information on redeemed coupons in any number of ways to accommodate the special needs of the particular store." (see column 4, lines 64-67 – column 5, lines 1-14 and column 22, lines 31-35). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was



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made to add the incentive processor (200) of Fajkowski to Off et al because the server (200) performs a similar function as the host computer (16) of Off et al, as lines 39-47 of column 3 of Off et al show. And as explained before rainchecking a coupon is accomplished by putting a marker to the coupon, as lines 34-66 of column 20 of Fajkowski show. Thus, modifying Off et al to raincheck coupons as Fajkowski does would be obvious. Although Fajkowski puts a raincheck mark to a coupon that is stored in a coupon card or smart card, official notice is taken that it is old and well known in the computer art that anything that can be saved in a computer or processor memory can be printed. It would have been obvious to a person of ordinary skill in the art at the time of the applicant's invention to print the raincheck that is stored in the smart card so that the client can have a paper copy of the raincheck.

Off et al fail to teach:

"said incentive processor is configured to generate raincheck information including at least one purchasing incentive *offered* in response to receipt of said data defining said item identifier for said item subject to said raincheck, said plurality of purchasing incentives, and said plurality of item identifiers";

"said *raincheck information further* comprising an additional incentive *different from and supplementing the at least one purchasing incentive associated with said item subject to rainchecking, said additional incentive being offered in conjunction with said raincheck* to compensate a customer for said item being out of stock".

"said incentive processor is configured to transmit said raincheck information to a respective incentive printer of said at least one incentive printer over said incentive

processor bus and said respective incentive printer is configured to print a raincheck including said at least one purchasing incentive *and said additional incentive* in response to receipt of said raincheck information received from said incentive processor.”

Fajkowski teaches “said incentive processor is configured to generate raincheck information including at least one purchasing incentive in response to receipt of said data defining said item identifier for said item subject to said raincheck, said plurality incentives, and said plurality of item identifiers” (see column 5, lines 9-14; column 20, lines 34-66; column 22, lines 18-60). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to add the raincheck feature of Fajkowski to Off et al. As explained before, adding the incentive processor (200) of Fajkowski to Off et al would be advantageous and adding the capability of Fajkowski of generating rainchecks to Off et would be a good business strategy. The clients would not have to worry if the item is out of stock and the coupon is soon to expire.

Fajkowski fails to teach “said incentive processor is configured to transmit said raincheck information to a respective incentive printer of said at least one incentive printer over said incentive processor bus and said respective incentive printer is configured to print a raincheck including said at least one purchasing incentive *and said additional incentive* in response to receipt of said raincheck information received from said incentive processor”. Official notice is taken that it is old and well known in the computer art that anything saved to a computer or device memory can be printed. As

lines 23-29 of column 6 of Fajkowski teach "conventional system transfer the coupon information to a printer to produce a printed paper coupon. The adapter of the Fajkowski invention avoids any need for paper by transmitting the coupon directly to the coupon card". And as lines 9-14 of column 5 of Fajkowski teach, "the server (200) will transfer to the periphery device information that is needed for eventual loading by the periphery device onto coupons cards (e.g., information on future coupons or coupons for immediate use)". Also lines 65-67 of column 24 and lines 1-66 of column 25 show that the server (200) has coupons and rebates store in its database and therefore accessible to periphery devices. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to install a printer to the server (200) and print coupons, this printer being the incentive printer. Also, the applicant has not disclosed that the physical location of the printer connected to the server (200) provides an advantage, is used for a particular purpose, or solves a stated problem. A person of ordinary skill in the art, furthermore, would have expected the Applicant's invention to perform equally well with either the printer directly connected to the server or in another location, as long as the server and the printer can communicate with each other. If a particular server and printer can communicate with each other, it would be obvious that a bus can connect them and that the bus can be called the incentive processor bus between that printer and server.

Fajkowski fails to teach, "said *raincheck information* further comprising an additional incentive *different from and supplementing the at least one purchasing incentive associated with said item subject to rainchecking, said additional incentive*

*being offered in conjunction with said raincheck* to compensate a customer for said item being out of stock". However, the article Customer responses to rainchecks teaches about a research study that explores alternatives to compensate a customer for items being out of stock. "When an out of stock situation arises on advertised products, a new government ruling provides the retailer with the option of issuing a raincheck, offering a substitution, or providing other compensation at least equal to the advertised value... In situations where retailers are not likely to meet customers' needs through the use of a raincheck, they might consider some other option... Some of these situations might be identified by simply asking customers what they want when the out of stock situation occurs... "Would you like a raincheck, a substitution, or can we compensate you some other way to say we are sorry for being out of stock and keep you happy as a valued customer"... Once a raincheck has been issued, and it becomes clear that the retailer will not be able to honor it in a timely manner, retailers might still salvage some goodwill by contacting raincheck holder and offering them an alternative course of action. For instance, a retailer might offer to provide a gift certificate, or other form of discount, to compensate the customer for the inconvenience of the stock out... stores might develop a policy of issuing a statement of, "We are sorry to be out of stock on the desired item with a coupon good for equal savings on a future purchase"... This provides some compensation to the customer. If this coupon cost were charged directly to the store or charged against the store manager's direct bonus, it might provide motivation for the manager to stay in stock on advertised items..."(see paragraphs 40-46). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the

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application was made, to know that Fajkowski not only would offer rainchecks as an incentive but also would also offer other incentives, that would supplement and would be different to the raincheck, such as coupons, gift or discounts, as taught by the above-cited article. This feature would have the purpose of keeping customers happy and trying to avoid losing them as customers.

*As per claim 2, Off et al fail to teach:*

“a retailer site configured to identify said plurality of purchasing incentives corresponding to said plurality of item identifiers”;

“an incentive processing site”;

“wherein said retailer site configured to transmit said plurality of purchasing incentives corresponding to said plurality of item identifiers to said incentive processing site”;

“said incentive processing site is configured to receive said plurality of purchasing incentives corresponding to said plurality of item identifiers from said retailer site”; and

“said incentive processing site is configured to store said plurality of purchasing incentives corresponding to said plurality of item identifiers via said incentive processor”

Fajkowski shows:

“a retailer site configured to identify said plurality of purchasing incentives corresponding to said plurality of item identifiers” (see column 22, lines 49-62);

“an incentive processing site” (column 23, lines 49-59; column 24, lines 54-67 – column 25, lines 1-51 and item 300 of figure 1);

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“wherein said retailer site configured to transmit said plurality of purchasing incentives corresponding to said plurality of item identifiers to said incentive processing site” (column 23, lines 49-59; column 24, lines 54-67 – column 25, lines 1-51 and item 300 of figure 1);

“said incentive processing site is configured to receive said plurality of purchasing incentives corresponding to said plurality of item identifiers from said retailer site” (column 23, lines 49-59; column 24, lines 54-67 – column 25, lines 1-51 and item 300 of figure 1);

“said incentive processing site is configured to store said plurality of purchasing incentives corresponding to said plurality of item identifiers via said incentive processor” (column 23, lines 49-59; column 24, lines 54-67 – column 25, lines 1-51 and item 300 of figure 1).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to add the feature of an incentive processing site of Fajkowski to Off et al. As explained before, upon adding the server (200) to the POS bus of Off et al, the incentive processing site (300) can also be added as a obvious feature to Off et al because as Fajkowski shows, clearinghouse (300) is connected to server (200). This feature would be an improvement to the Off et al system because the retailers and manufacturers can changed the value of coupons and offer rebates in a more efficient way as lines 36-56 of column 25 of Fajkowski show.

As per claim 3, Off et al fail to teach:

“one of said retailer site is and said incentive processing site is configured to generate a raincheck list including a description of items corresponding to said plurality of item identifiers along with said plurality of item identifiers”;

“said respective cash register of said at least one cash register is configured to receive said data defining said item identifier for an item that is subject to a raincheck based on said raincheck list.”

Fajkowski shows:

“one of said retailer site is and said incentive processing site is configured to generate a raincheck list including a description of items corresponding to said plurality of item identifiers along with said plurality of item identifiers (column 20, lines 34-67-column 21 and column 22; column 23, lines 49-59; column 24, lines 54-54-67 – column 25, lines 1-51). Fajkowski does not explicitly disclose the feature of retailer site generating a raincheck list. However, this feature is deemed to be inherent to Fajkowski as lines 36-62 of column 25 show that “...a manufacturer can rapidly respond to redemption rates and market feedback and reuse the coupons by increasing its value nationally, regionally, or in a more specific locale. If the manufacturer wishes to increase the coupon’s value, clearinghouse (300) will, on instructions from the manufacturer, create a new bar code and new redemption requirement data showing an increased value for the coupon’s redemption. This new bar code and redemption requirement data is then transmitted to periphery devices by server (200) along with other redemption requirement data for future coupons. When a coupon card is placed in periphery device the original bar code of the coupon which is to be increased in value will be located and

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the new bar code along with the new redemption requirement data will replace the previous bar code and redemption requirement data. To make the coupon card user aware of the increase in the value of the coupon, the coupon record will contain a marker..." If the retailer can mark coupons that are going to increase in value, marking coupons for a list of items that are out of stock with a raincheck would be an obvious feature as lines 34-66 of column 20 of Fajkowski show.

"Said respective cash register of said at least one cash register is configured to receive said data defining said item identifier for an item that is subject to a raincheck based on said raincheck list" (see column 20, lines 34-67 - column 21, lines 1-67).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify Off et al to accept rainchecks coupons.

As per claim 4, Off et al fail to teach:

"said incentive processor configured to store a printed raincheck list comprising a list of when rainchecks were printed and item identifiers corresponding thereto";

"said incentive processing site is configured to generate a weekly report of printed rainchecks and item identifiers corresponding thereto based on said printed raincheck list";

Fajkowski shows:

"said incentive processor configured to store a printed raincheck list comprising a list of when rainchecks were printed and item identifiers corresponding thereto" (see column 22, lines 18-48);



"said incentive processing site is configured to generate a weekly report of printed rainchecks and item identifiers corresponding thereto based on said printed raincheck list" (see column 22, lines 28-48).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to add the incentive processor of Fajkowski to Off et al and to store the data and generate reports such as total coupon redemptions that day, total redemption sum per manufacturer, total redemption sums per cash register and detailed information on overrides, like rainchecks.

As per claim 5, Off et al fail to teach:

"said at least one purchasing incentive comprises one of a token and a discount coupon";

"said token enabling a customer to purchase said item subject to said raincheck when said item is in stock and at a price when said item was subject to said raincheck";

"said discount coupon enabling a customer to purchase said item subject to said raincheck when said item is in stock and at a price discounted from said price when said item was subject to said raincheck";

Fajkowski shows:

"said at least one purchasing incentive comprises one of a token and a discount coupon" (see column 20, line 34-38);

"said token enabling a customer to purchase said item subject to said raincheck when said item is in stock and at a price when said item was subject to said raincheck" (see column 20, line 34-38);

"said discount coupon enabling a customer to purchase said item subject to said raincheck when said item is in stock and at a price discounted from said price when said item was subject to said raincheck" (see column 20, line 34-38);

Fajkowski does not explicitly disclose the feature that the raincheck would be a discount coupon or a token. However, this feature is deemed to be inherent because in the retail business when a customer discovers that a desired item is out of stock, the retailer often provides the customer with a raincheck, which is essentially a certificate, be a token or a discount coupon, granting the customer a guarantee that the out of stock item may be purchased later at the current price.

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to add the raincheck feature of Fajkowski to Off et al, allowing customers to use a discount coupon after its expiration date.

As per claim 6, it has the same limitations as claim 5, therefore the same rejection applies.

As per claims 7-8, Off et al fail to teach:

"said item subject to said raincheck when said item is not in stock";

Fajkowski shows:

"said item subject to said raincheck when said item is not in stock" (see column 20, lines 34-38);

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to implement the raincheck feature of Fajkowski to Off et al.

As per claims 9-16, they are written in process format and contain the same limitations as claims 1-8, therefore the same rejections apply.

As per claims 17-24, they are written as a computer program and contain the same limitations as claims 1-8, therefore the same rejections apply.

As per claims 25-32, they are written in means format and contain the same limitations as claims 1-8, therefore the same rejections apply.

### ***Response to Arguments***

Applicant's arguments filed 11/13/03 have been fully considered but they are not persuasive. Applicant argues that the Customer article teaches alternative actions to rainchecking, not supplemental actions and that the alternative action occurs only when it becomes clear that the retailer will not be able to honor the raincheck in a timely manner. The Examiner answers that claim 1 recites, "said *raincheck information further comprising an additional incentive different from and supplementing the at least one purchasing incentive associated with said item subject to rainchecking, said additional incentive being offered in conjunction with said raincheck* to compensate a customer for said item being out of stock". The article Customer responses to rainchecks teaches about a research study that explores alternatives to compensate a customer for items being out of stock. "When an out of stock situation arises on advertised products, a new government ruling provides the retailer with the option of issuing a raincheck, offering a substitution, or providing other compensation at least equal to the advertised value...In situations where retailers are not likely to meet customers' needs through the use of a raincheck, they might consider some other option...Some of these situations might be

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identified by simply asking customers what they want when the out of stock situation occurs... "Would you like a raincheck, a substitution, or can we compensate you some other way to say we are sorry for being out of stock and keep you happy as a valued customer"...Once a raincheck has been issued, and it becomes clear that the retailer will not be able to honor it in a timely manner, retailers might still salvage some goodwill by contacting raincheck holder and offering them an alternative course of action. For instance, a retailer might offer to provide a gift certificate, or other form of discount, to compensate the customer for the inconvenience of the stock out...stores might develop a policy of issuing a statement of, "We are sorry to be out of stock on the desired item with a coupon good for equal savings on a future purchase"...This provides some compensation to the customer. If this coupon cost were charged directly to the store or charged against the store manager's direct bonus, it might provide motivation for the manager to stay in stock on advertised items..."(see paragraphs 40-46). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that the Customer article teaches that retailers would ask customers what they want when an item is out of stock and would give them an alternative to choose with the sole purpose of keeping the customers happy. The Applicant argues that the Customer article cannot provide to the customer a raincheck and a supplemental incentive because the customer has to wait to know if the retailer will not honor the raincheck before receiving another incentive. However, the article teaches that the customer would have the alternative to choose what he or she wants, and it would have been obvious to a person of ordinary skill at the time the application

was made, to know that the customer would receive as a bundle a raincheck and an additional incentive as this would ensure that the customer would receive some reward for the inconvenience that the retailer would not be able to honor the raincheck.

***Conclusion***

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL LASTRA whose telephone number is 703-306-5933. The examiner can normally be reached on 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, ERIC W STAMBER can be reached on 703-305-8469. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DL

Daniel Lastra  
February 26, 2004



MELANIE A. KEMPER  
PRIMARY EXAMINER